

FIRST PRINT

**FISHERIES AND OYSTER FARMS (AMENDMENT) BILL
1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Fisheries and Oyster Farms Act 1935 so as—

- (a) to increase, to a small extent, the area of the waters of Brisbane Water and Broken Bay that may be used for net fishing;
- (b) to require persons selling or storing fish to make or obtain and to keep records concerning dealings in the fish; and
- (c) to specify additional circumstances in which an article seized in connection with an alleged offence may be forfeited.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with one exception, the proposed Act will commence on the date of assent. The exception is the amendment to the Principal Act imposing the requirement to keep records. That amendment will commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Fisheries and Oyster Farms (Amendment) 1987

Schedule 1 (1) amends section 19 of the Principal Act which currently prevents a person from using a net of any kind in any of the waters of Brisbane Water (or its tributaries) or Broken Bay north of a line drawn from Box or Hawk Head to Green Point. Under the amendment, the closure line will be drawn from Little Box Head to Green Point.

Schedule 1 (2) inserts section 40DA into the Principal Act. The proposed section requires the making of records relating to the sale, purchase and storage of quantities of fish of not less than a quantity to be prescribed by regulation, the retention of the records for a specified period and the production of the records to an inspector on request. The proposed section provides that it is an offence for a person knowingly to make a false or misleading entry in such a record. The proposed section also enables an inspector to enter and search any place (other than a dwelling-house) where fish are kept or treated for the purposes of business.

Schedule 1 (3) amends section 95 of the Principal Act to provide (in addition to the other circumstances specified in the section) that if an article is seized in connection with an alleged offence under the Principal Act—

- (a) the payment of a penalty or the making of an order for payment following the issue of a penalty notice in respect of the offence; or
- (b) the making of an order under section 556A of the Crimes Act 1900 in respect of the offence,

operates as a forfeiture of the article.

**FISHERIES AND OYSTER FARMS (AMENDMENT) BILL
1987**

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 58, 1935

SCHEDULE 1—AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935



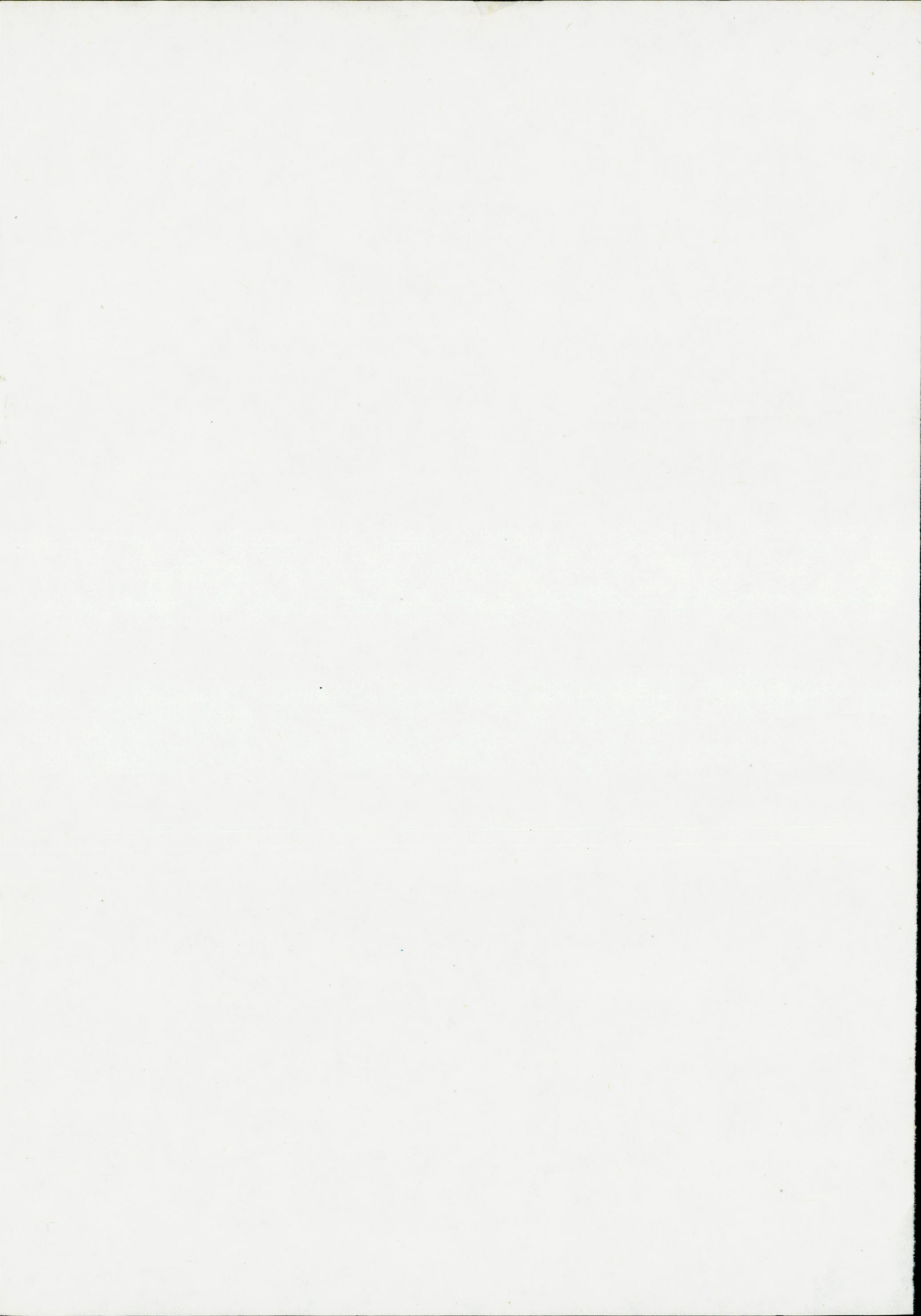
Fisheries and Oyster Farms (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

- (e) the making of an order under section 556A of the Crimes Act 1900 in respect of the offence,
- (d) Section 95 (2)—
Omit the subsection.







**FISHERIES AND OYSTER FARMS (AMENDMENT) BILL
1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Fisheries and Oyster Farms Act 1935 to increase a fishing area, to require the keeping of records concerning dealings in fish and to make further provision for the forfeiture of articles used in the commission of offences.

Fisheries and Oyster Farms (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Fisheries and Oyster Farms (Amendment) Act 1987".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence
10 on the date of assent to this Act.

(2) Schedule 1 (2), and section 3 in its application to that provision, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 58, 1935

15 3. The Fisheries and Oyster Farms Act 1935 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

**AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935**

20

(1) Section 19 (Closing against net fishing of Brisbane Water and part of Port Hacking and certain waters)—

Section 19 (1) (a)—

Omit "Box or Hawk Head", insert instead "Little Box Head".

SCHEDULE 1—*continued*AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

(2) Section 40DA—

After section 40D, insert:

Records concerning acquisition, sale and possession of fish

5 40DA. (1) A person who sells a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and—

- (a) who fails to make and deliver to the purchaser, on or before the sale, a prescribed record concerning the sale by the person of the fish;
- 10 (b) who fails to retain a copy of the record for not less than 12 months after the fish are sold; or
- (c) who fails, during the 12-month period, to produce the copy of the record when requested to do so by an inspector,

is guilty of an offence.

15 (2) A person who sells a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and—

- (a) who fails—
- (i) to make, before the sale; or
- 20 (ii) to obtain, on or before the sale, from any other person from whom the person acquired the fish,
- a prescribed record concerning the possession by the person of the fish;
- (b) who fails to retain the record for not less than 12 months after the fish are sold; or
- 25 (c) who fails, during the 12-month period, to produce the record when requested to do so by an inspector,

is guilty of an offence.

SCHEDULE 1—*continued*AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

5 (3) A person who has possession of a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and who fails to produce a prescribed record concerning the possession by the person of the fish when requested to do so by an inspector is guilty of an offence.

10 (4) It is a defence to a prosecution for an offence under subsection (3) if the defendant (not being a person who carries on the business of selling or processing fish or fish products) proves that the fish were in the defendant's possession otherwise than for the purpose of sale or storage for reward.

(5) A person who makes an entry in a record, or copy, kept for the purposes of this section knowing that the entry is false or misleading in a material particular is guilty of an offence.

15 (6) An inspector may, for the purposes of this section, at all reasonable times enter and search any market or any shop or the place of business of any person where fish are publicly exposed for sale, and any cool store, smoke-house, canning factory or other place (not being a dwelling-house) where fish are kept or treated for the purposes of business.

20 (3) Section 95 (**Conviction etc. to operate as forfeiture**)—

(a) Section 95 (1) (a)—

Omit "or".

(b) Section 95 (1) (b)—

Omit "that offence,"; insert instead "the offence;".

25 (c) Section 95 (1) (c)–(e)—

After section 95 (1) (b), insert:

(c) the payment, under section 91A, of a penalty in respect of the offence;

30 (d) the making of an order under section 100L of the Justices Act 1902 in respect of the offence; or

**FISHERIES AND OYSTER FARMS (AMENDMENT) ACT
1987 No. 67**

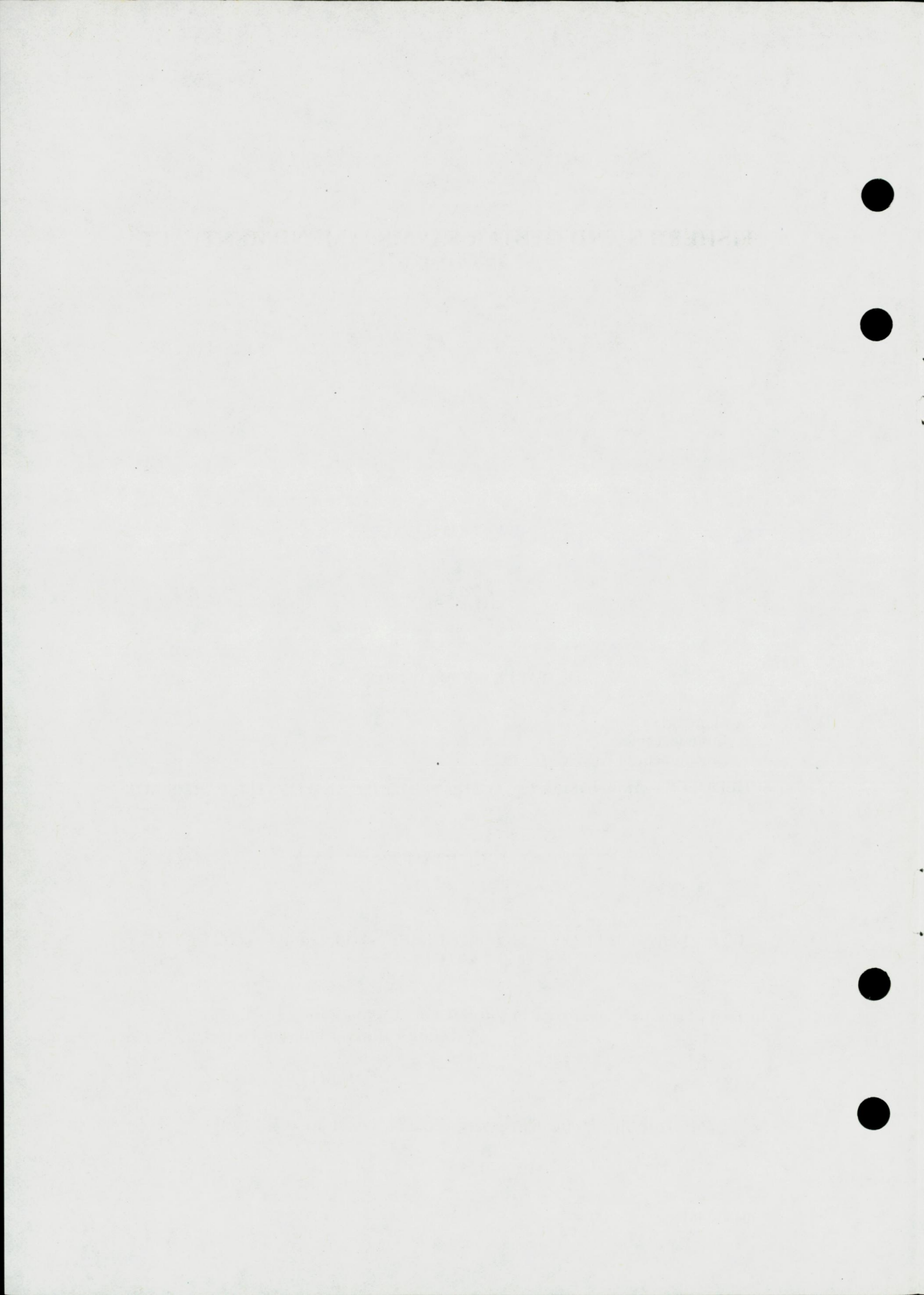
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 58, 1935

SCHEDULE 1—AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935



FISHERIES AND OYSTER FARMS (AMENDMENT) ACT 1987
No. 67

NEW SOUTH WALES



Act No. 67, 1987

An Act to amend the Fisheries and Oyster Farms Act 1935 to increase a fishing area, to require the keeping of records concerning dealings in fish and to make further provision for the forfeiture of articles used in the commission of offences. [Assented to 3 June 1987]

Fisheries and Oyster Farms (Amendment) 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Fisheries and Oyster Farms (Amendment) Act 1987".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (2), and section 3 in its application to that provision, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 58, 1935

3. The Fisheries and Oyster Farms Act 1935 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935

(1) Section 19 (Closing against net fishing of Brisbane Water and part of Port Hacking and certain waters)—

Section 19 (1) (a)—

Omit "Box or Hawk Head", insert instead "Little Box Head".

Fisheries and Oyster Farms (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

(2) Section 40DA—

After section 40D, insert:

Records concerning acquisition, sale and possession of fish

40DA. (1) A person who sells a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and—

- (a) who fails to make and deliver to the purchaser, on or before the sale, a prescribed record concerning the sale by the person of the fish;
- (b) who fails to retain a copy of the record for not less than 12 months after the fish are sold; or
- (c) who fails, during the 12-month period, to produce the copy of the record when requested to do so by an inspector,

is guilty of an offence.

(2) A person who sells a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and—

- (a) who fails—
 - (i) to make, before the sale; or
 - (ii) to obtain, on or before the sale, from any other person from whom the person acquired the fish,

a prescribed record concerning the possession by the person of the fish;

- (b) who fails to retain the record for not less than 12 months after the fish are sold; or
- (c) who fails, during the 12-month period, to produce the record when requested to do so by an inspector,

is guilty of an offence.

Fisheries and Oyster Farms (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

(3) A person who has possession of a quantity of fish (other than oysters or any prescribed fish) which is not less than the prescribed quantity and who fails to produce a prescribed record concerning the possession by the person of the fish when requested to do so by an inspector is guilty of an offence.

(4) It is a defence to a prosecution for an offence under subsection (3) if the defendant (not being a person who carries on the business of selling or processing fish or fish products) proves that the fish were in the defendant's possession otherwise than for the purpose of sale or storage for reward.

(5) A person who makes an entry in a record, or copy, kept for the purposes of this section knowing that the entry is false or misleading in a material particular is guilty of an offence.

(6) An inspector may, for the purposes of this section, at all reasonable times enter and search any market or any shop or the place of business of any person where fish are publicly exposed for sale, and any cool store, smoke-house, canning factory or other place (not being a dwelling-house) where fish are kept or treated for the purposes of business.

(3) Section 95 (**Conviction etc. to operate as forfeiture**)—

(a) Section 95 (1) (a)—

Omit "or".

(b) Section 95 (1) (b)—

Omit "that offence," insert instead "the offence;".

(c) Section 95 (1) (c)–(e)—

After section 95 (1) (b), insert:

(c) the payment, under section 91A, of a penalty in respect of the offence;

(d) the making of an order under section 100L of the Justices Act 1902 in respect of the offence; or

Fisheries and Oyster Farms (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE FISHERIES AND OYSTER FARMS ACT
1935—*continued*

- (e) the making of an order under section 556A of the Crimes Act 1900 in respect of the offence,
- (d) Section 95 (2)—
Omit the subsection.

